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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of

Implementation of Section 309(j)  
of the Communications Act  
Competitive Bidding

PP Docket No. 93-253

TO: The Commission

PETITION FOR CLARIFICATION AND RECONSIDERATION  
OF  
NATIONAL ASSOCIATION OF BUSINESS  
AND EDUCATIONAL RADIO, INC.

The National Association of Business and Educational Radio, Inc. ("NABER"), by its attorneys, respectfully submits, pursuant to Section 1.106 of the Commission's Rules, 47 C.F.R. Section 1.106, Clarification and Reconsideration of the Commission's Report and Order in the above-captioned proceeding.

In General Docket No. 93-253<sup>1</sup>, the Commission has adopted an Order to implement the recent statutory amendment to the Communications Act of 1934, as amended, in order to comply with the Congressional directive contained in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") to consider regulations to deter unjust enrichment by lottery winners. The Order adopts a rule requiring disclosure of transfer of control or assignment where the subject license was acquired by the transfer or through a Commission lottery. This disclosure requirement would require that "any applicant for voluntary transfer of control or assignment would be required to file, together with its application, the

<sup>1</sup> Fed. Reg. Vol. 59, No. 38, February 25, 1994.

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associated contracts for sale, option agreements, management agreements or other documents disclosing the total consideration received in return for the transfer of its license."<sup>2</sup>

NABER fully recognizes the reasons for the Commission's actions in this Order and acknowledges the mandate of the Congress given to the Commission as expressed in the Budget Act. However, NABER believes the Order needs to be clarified in several respects. This clarification is necessary based upon a comparison of the text of the rules as actually adopted when compared with the text of the Report and Order. Specifically, NABER believes that the text of the Report and Order more closely states the interest of Congress with respect to its concern for transfer disclosure requirements necessary to prevent unjust enrichment by lottery recipients.

The Commission has recognized that the "most egregious cases of unjust enrichment and speculation associated with past lotteries have occurred in the 'commercial' services" and that the Congress has authorized auctions and has required that licenses for commercial services filed for acceptance after July 26, 1993 which are mutually exclusive not be granted by lottery, thereby substantially deterring future instances of unjust enrichment. However, the rules adopted by the Commission require that any applicant for voluntary transfer of control or assignment be required to file the disclosure information.

It is not clear to NABER that Congress' interest with respect to unjust enrichment and disclosure was to be applied retroactively

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<sup>2</sup> Order at pg. 14.

by the Commission. Rather, the entire thrust of the Budget Act was to recognize fully the need for auctions to apply to future application proceedings in order to prevent instances of "unjust enrichment" by lotteries which have occurred in the past. It is NABER's view that the unjust enrichment rules should be applied to any license issued by the Commission through lotteries conducted after July 26, 1993. To apply the reporting requirements retroactively to licenses which may have been granted more than ten (10) years ago will only create unnecessary administrative burdens and disclosure requirements on licensees who may have been awarded their license under lottery at a time when the Commission did not have auction authority.

There is no statutory basis for the Commission to interfere with or claim adjustment to any consideration received by a licensee which may have received a license prior to the applicable effective dates of the Budget Act and prior to the grant of auction authority to the Commission. Further, the information gained by the Commission's review of assignment agreements for licenses which were granted long ago will not provide the useful information which the Commission seeks to acquire, since such licenses were already subject to construction (and in some case, loading) requirements. Therefore, NABER would request that the transfer disclosure requirements be applied prospectively to winners of lotteries and not to the myriad of stations which may have occurred in the Specialized Mobile Radio services at 800 MHz, 900 MHz or at 220 MHz.

To the extent the disclosure Order does apply to transferor licensees who received their licenses by lottery, it should be clarified that the disclosure requirements apply only as to those actual licenses being transferred or assigned which were received in a lottery. Disclosure should be limited to either a summary or those sections of an agreement involving licenses received in a lottery.

Because it is typical in services such as Specialized Mobile Radio that the assignment involves a number of licenses, the transferor should not be required to file portions of a contract unrelated to the consideration received for the license received by lottery. An acceptable solution, therefore, would be to allow the use of summaries and extracts. This approach should also reduce the amount of paperwork submitted to the Commission.

Finally, in the text of the Order, the Commission acknowledged its existing procedures for maintaining confidentiality of such filings. However, nowhere in the rules as adopted did the Commission specifically reference that such information will be treated as confidential and not subject to disclosure under Freedom of Information requests. The disclosure information filed by an applicant must be given this protection and such confidential information should be made clear in the rules adopted.<sup>3</sup>

#### **CONCLUSION**

**WHEREFORE,** the National Association of Business and Educational Radio, Inc. hereby respectfully requests that the

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<sup>3</sup> Order at pg. 14.

Commission consider the above-said comments and act in a manner in accordance with the views expressed herein.

Respectfully submitted,

NATIONAL ASSOCIATION OF BUSINESS  
AND EDUCATIONAL RADIO, INC.

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